

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

JANET WATKINS,

Plaintiff,

vs.

GMAC MORTGAGE,

Defendant.

Case No. 2:12-cv-01371-GMN-GWF

**FINDINGS AND  
RECOMMENDATION**

Defendant's Motion to Deem  
Settlement Agreement Executed (#43)

This matter comes before the Court on Defendant's Motion to Deem the Settlement Agreement Executed (#43) filed on May 1, 2014. No opposition was filed in this matter.

**BACKGROUND**

On May 14, 2013, Plaintiff filed an Amended Complaint against Defendant GMAC Mortgage, LLC (incorrectly identified as GMAC Mortgage), for alleged Mortgage Fraud. *See Doc. #28* at pg. 4. During a settlement conference held on August 13, 2013 before the undersigned, the parties reached a settlement agreement. *See Dkt. #35*. At the conclusion of the settlement conference, the parties signed a Memorandum of Settlement Agreement which included the material terms of the agreement and instructed the parties to "execute full and complete settlement documents to carry the terms stated in this Memorandum into effect." The agreement was later reduced to writing as ordered. Defendant, however, has been unable to locate Plaintiff to execute the settlement agreement or the associated exhibits to effectuate the terms of the agreement. Despite numerous efforts by Defendant's counsel to contact Plaintiff, Plaintiff has remained unresponsive. When Plaintiff failed to appear for a telephonic status conference scheduled on January 27, 2014, the Court directed Defendant to bring the present Motion (#43) to enforce the

1 settlement agreement. *See Dkt. #38*. A hearing was scheduled on Defendant's Motion (#43) for  
2 May 29, 2014, but was later vacated due to Plaintiff's failure to file an opposition in the matter.

### 3 DISCUSSION

4 It is a well-settled principle that a court has inherent power summarily to enforce a  
5 settlement agreement involving an action pending before it. *See Dacanay v. Mendoza*, 573 F.2d  
6 1075, 1078 (9th Cir. 1978). The authority of a trial court to enter a judgment enforcing a settlement  
7 agreement has as its foundation the policy favoring the amicable adjustment of disputes and the  
8 concomitant avoidance of costly and time consuming litigation. *See In re Springpark Assoc.*, 623  
9 F.2d 1377, 1380-81 (9th Cir. 1980). Furthermore, under Nevada law, an agreement to settle  
10 pending litigation can be enforced by motion in the case being settled if the agreement is either  
11 reduced to a signed writing or entered in the court minutes following a stipulation. *See Grisham v.*  
12 *Grisham*, 289 P.3d 230, 233 (Nev. 2012).

13 Here, the parties reached a valid settlement agreement at a settlement conference before the  
14 undersigned. *See Dkt. #35*. Both parties signed a Memorandum of Settlement Agreement  
15 containing the material terms of the settlement. Defendant contends that there is no dispute as to  
16 the terms of the settlement reached, rather the sole remaining issue is the formal execution of the  
17 agreement. *See Doc. #43* at pg. 3-4. The Nevada Supreme Court has held that a settlement  
18 contract can be formed when the parties have agreed to its material terms, even though the  
19 contract's exact language is finalized at a later time. *See May v. Anderson*, 121 Nev. 668, 119 P.3d  
20 1254, 1256 (2005); *see also Singh v. Reed*, 551 Fed.Appx.927, 927 (9th Cir. 2014) (holding that  
21 plaintiff's signature to a settlement agreement was not a precondition to enforcement of the  
22 agreement when other evidence established acceptance to the material terms). "In the case of a  
23 settlement agreement, a court cannot compel compliance when material terms remain uncertain.  
24 The Court must be able to ascertain what is required of the respective parties." *See May v.*  
25 *Anderson*, 121 Nev. 668, 119 P.3d 1254, 1256 (2005). Here, the Court conducted the settlement  
26 conference and was privy to the material terms of the confidential agreement reached.  
27 Furthermore, Defendant filed the confidential settlement agreement under seal, which the Court has  
28 reviewed and finds to be consistent with the agreed to terms at the settlement conference.

1 Defendant should not be prejudiced due to its inability to locate Plaintiff to obtain the proper  
2 signatures. It is therefore recommended that the Settlement Agreement and Release between the  
3 parties be deemed fully executed and Plaintiff's case dismissed with prejudice. Accordingly,

4 **RECOMMENDATIONS**

5 **IT IS HEREBY RECOMMENDED** that Defendant's Motion to Deem the Settlement  
6 Agreement Executed (#43) be **granted**.

7 **IT IS FURTHER RECOMMENDED** that the Settlement Agreement reached between the  
8 parties at the August 13, 2013 settlement conference be deemed fully executed, along with the  
9 accompanying exhibits and Release.

10 **IT IS FURTHER RECOMMENDED** that this action be dismissed with prejudice.

11 **NOTICE**

12 Under Local Rule IB 3-2, any objection to this Finding and Recommendation must be in  
13 writing and filed with the Clerk of the Court within fourteen (14) days. Appeals may be waived  
14 due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142  
15 (1985). Failure to file objections within the specified time or failure to properly address and brief  
16 the objectionable issues waives the right to appeal the District Court's order and/or appeal factual  
17 issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991);  
18 *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

19 DATED this 29th day of May, 2014.

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22 GEORGE FOLEY, JR.  
23 United States Magistrate Judge  
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